

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Irene
Gomez-Bethke, Commissioner,
Department of Human Rights,

Complainant,

REOPEN
V.

EVIDENCE
Office of County Auditor,
Douglas County, by William J.
Anderson, County Auditor,

Respondents.

ORDER DENYING MOTION TO
THE RECORD FOR 'THE
PRESENTATION OF FURTHER

On September 29, 1983, Thomas J. Reif, Douglas County
Attorney, 1017

Broadway, Box 819, Alexandria, Minnesota 56308, Attorney for the
Respondent,

filed a Motion with the Office of Administrative Hearings requesting
that the

Bearing Examiner reopen the proceedings previously held on Ely 22,
1983, to

receive evidence of William T. Anderson's character for
truthfulness. That

Motion was precipitated by the Brief filed by Carl Warren, Special-
Assistant

Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota
Street, St.

Paul, Minnesota 55101, counsel for the Complainant. in the
complainant's

Brief, the Complainant attacked Anderson's credibility and
truthfulness. On

October 3, 1983, Oxomplainant's counsel amended his Brief by
retracting as-

sections that Anderson laed. 'am Hearing Examiner was uncertain
whether or

not tie Respondent intended to proceed with its Motion in view of the amend-

nents node by the Complaintant to its Brief and wrote to his counsel on

October 3, 1983, requesting him to clarify its position regarding the status

of the Motion, and if it was not withdrawn, to cite any legal authorities it

was relying on in support of the Motion. On October 7, 1983, the Respondent

filed Notice that its Motion stands, but no legal authorities were cited. On

October 11, 1983, pursuant to the Bearing Examiner's prior direction, the Com-

plainant filed its argument in opposition to that Motion.

Now, therefore, based on all of the files, records and proceedings herein,
it is Ordered:

That the Respondent's Motion to reopen the record in this matter for the

introduction of character evidence on behalf of the Respondent William

Anderson be and the same is denied; and that the record is now closed.

Dated this (day of October, 1983.

JON L. LUNDE
Hearing Examiner

MEMORANDUM

The issue in this case is whether a post-hearing motion to reopen One record for the introduction of evidence as to the character for truthfulness of a party should be granted where the party was impeached by evidence of prior inconsistent statements and where the party is characterized as having lied in a post-hearing Brief, which is later amended to exclude those characterizations.

Motions to reopen the record for the receipt of additional evidence are authorized under 9 MCAR 2.203B. and 2.213B. administrative agencies are normally considered to have the implied or inherent power comparable to that possessed by courts to reopen cases or reconsider their decisions. 73A C.J.S., Public Administrative law and Procedure 161. The usual rule is that it is within the discretion of a trial court to allow a party to reopen its case after it has rested. See, 89 C.J.S., trial 591. Such motions should be granted where the evidence is incontrovertible or was inadvertently overlooked in order that the whole case can be presented and in order to accomplish substantial justice. On the other hand, the movant must establish good cause for the motion and the trial court should consider whether the evidence was known to the moving party before resting, whether the evidence opens up new matters, and whether the evidence is material or merely cumulative. 89 C.J.S., trial G 9A. Dun. Minn. Dig.2nd, trial 403d. and En (3d Ed. 1978).

In this case, it is concluded that the character evidence sought to be offered by the respondent raises new issues not material to this case and evidence which should not be considered. Consequently, the Motion should be denied.

As a general rule, evidence of the character of the parties to a civil action is inadmissible unless character is directly at issue. 32 C.J.S., Evidence GXQ Dig. 3242 (3rd ed 1978). 'Ads longstanding, common law rule is codified in rule 608 of the Minnesota Rules of Evidence. rule 608(a) provides:

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) One evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

Whether the character of a party is "otherwise" attacked by the presentation

of prior inconsistent statements depends on One circumstances of the

particular case. See, 1977 Committee Comment to rule 608, citing the U.S.

Supreme Court Advisory Committee's Note on Federal rule 608, which is substantially the same as the Minnesota Rule.

McCormick endorses the case-by-case approach noted in the comments to Rule 608, stating:

tnat . . . The view of the Kansas Courts seems sensible,
par- the judge shall consider in each case whether the
net ticular impeachment for inconsistency . . . amounts in
exer- effect to an attack on character for truth and shall
the cise his discretion accordingly to admit or exclude
the charater support.

McCormick, Law of Evidence, 49, pp. 107-08 (Hornbook
Series,
1954).

In determining whether -a party's character is otherwise
attacked, the

analysis adopted by Holmes, J., in Gertz v. Fitchburg R. Co., 137
Mass. 77, 78
(1884), is helpful. In that case, the plaintiff was impeached as
a witness by

his prior conviction by a crime and Holmes discussed the
difference between

that kind of impeachment and impeachment with prior contradictory
statements,

stating, in part, as follows:

true In such cases [prior inconsistent statements], it is
the that the result sought to be reached is the same as in
witness. present -- to induce the jury to disbelieve the
But the mode of reaching the result is different.
For, while contradiction or proof of contradictory
statements my very well have the incidental effect of impeaching
the character for truth of the contradicted witness in
the minds of the jury, the proof is not directed to
that point. The purpose and only direct effect of the
evidence are to show that the witness is not to be believed in
this instance. But the reason why he is not be believed is
left untouched. That nay be found in forgetfulness on the
part

of the witness, or -in his having been deceived, or in any other possible cause. The disbelief sought to be produced is perfectly consistent with an admission of his general good character for truth, as well as for the other virtues; and until the character of a witness is assailed, it cannot be fortified by evidence.

On the other hand, when it is proved that a witness has been convicted of a crime, the only ground for disbelieving him which such proof affords is the general readiness to do evil, which the conviction may be supposed to show.

In this case, it is concluded that Anderson's character for truthfulness

or untruthfulness has not been sufficiently attacked to permit proof of good

character. The inconsistent statements he made concerning certain facts were

explained by- him, and these statements are explainable on grounds other than

that he is generally of an untruthful character. The mere fact that Anderson

was characterized as a liar in Complainant's initial Brief (those allegations

now having been retracted) does not change the nature of Use inconsistent

statements the respondent now seeks to rebut with rehabilitating character

evidence. Those statements do not, by, themselves, malign his character for

truthfulness, or suggest that his testimony should not be believed because he is an untruthful person. On the contrary, the inconsistent statements only

raise issues as to his credibility. They tend only to show Not Anderson

should not be believed in this instance because of prior inconsistent state-

ments, not that he has an untruthful character and that his testimony should

be disbelieved on that ground.

Hunan Rights cases by their very nature involve frequent factual disputes

and a careful weighing of witnesses credibility. If character evidence was to

be consistently admitted in such proceedings every time a witness is impeached

with prior inconsistent statements or conflicting evidence, the issues in

those cases would lye obfuscated and the hearings extended. This would only confuse the already difficult credibility issues raised. These kinds of reasons form the basis for the current and long-standing rule that character evidence should not be admitted in a civil proceeding and are applicable 'here. In this case, Anderson's character for truthfulness or untruthfulness has not been assailed to the extent necessary to permit rehabilitation by evidence of his good character and tne respondent's Motion should, therefore, be denied.

J.L.L.